

**DOCKET FILE COPY ORIGINAL**  
**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

**ORIGINAL**  
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OFFICE OF THE SECRETARY

|                                   |   |                         |
|-----------------------------------|---|-------------------------|
| In re Applications of:            | ) | WT Docket No. 97-199    |
|                                   | ) |                         |
| WESTEL SAMOA, INC.                | ) | File No. 00560-CW-L-96  |
|                                   | ) |                         |
| For Broadband Block C Personal    | ) |                         |
| Communications Systems Facilities | ) |                         |
|                                   | ) |                         |
| and                               | ) |                         |
|                                   | ) |                         |
| WESTEL, L.P.                      | ) | File Nos. 00129-CW-L-97 |
|                                   | ) | 00862-CW-L-97           |
| For Broadband Block F Personal    | ) | 00863-CW-L-97           |
| Communications Systems Facilities | ) | 00864-CW-L-97           |
|                                   | ) | 00865-CW-L-97           |
|                                   | ) | 00866-CW-L-97           |

To: Honorable Arthur I. Steinberg, Administrative Law Judge

**PETITION TO INTERVENE**

ClearComm, L.P. ("ClearComm"), formerly known as PCS 2000, by its attorneys and pursuant to Sections 1.223(a) and (b) of the Commission's rules, hereby petitions to Intervene ("Petition") in the above-captioned proceeding.<sup>1</sup> As detailed below, ClearComm submits that this proceeding may directly impact upon its interests and that the Company's participation will assist the Commission in gathering the information necessary to make fully informed rulings on the issues designated for hearing. Accordingly, the Presiding Officer should grant ClearComm's petition for

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<sup>1</sup> This petition is timely filed pursuant to Section 1.223(a) and (b), which require that a petition for intervention be filed within 30 days of publication of the  
(...Continued)

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intervention without delay.

## I. INTRODUCTION

ClearComm is a limited partnership controlled by SuperTel Communications Corporation ("SuperTel"), its corporate general partner. ClearComm, formerly PCS 2000, is a limited partnership formed for the purpose of applying for C Block PCS authorizations. Prior to July 2, 1996, PCS 2000 was controlled by Unicom Corporation ("Unicom"),<sup>2</sup> its corporate general partner.<sup>3</sup> The alleged misconduct of agents of ClearComm during the C Block auction for the Norfolk, Virginia BTA -- including Anthony T. Easton, former Director and Chief Executive Officer of Unicom, and Quentin L. Breen, former Director of Unicom<sup>4</sup> -- was the subject of a Commission proceeding that resulted in the imposition of a notice of apparent liability in the amount of \$1 million against ClearComm.<sup>5</sup>

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issues designated for hearing in the *Federal Register*. 47 C.F.R. § 1.223(a) & (b). Such notice was published on October 15, 1997. 62 Fed. Reg. 53,628 (1997).

<sup>2</sup> On July 2, 1996, ClearComm submitted an amendment to each of its applications for C Block authorizations reflecting a change in the general partner of ClearComm from Unicom to SuperTel. Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 1703, 1714 (1997) ("NAL").

<sup>3</sup> For clarity, "PCS 2000" will be referred to by its current name "ClearComm" throughout this pleading.

<sup>4</sup> In response to the bidding incident, ClearComm amended its applications so that neither Mr. Breen nor Mr. Easton has any ownership interest or position of control in the Company. Hearing Designation Order ¶ 7.

<sup>5</sup> Application of PCS 2000, L.P., 12 FCC Rcd 1703, ¶ 55 (1997) Mr. Breen resigned from the Unicom Board of Directors on April 26, 1996. See Hearing Designation Order ¶ 34.

The instant proceeding arises out of the same alleged conduct, this time to review the character qualifications of Mr. Breen in his capacity as a principal of Westel Samoa, Inc. and Westel, L.P. (collectively, "Westel"), applicants for broadband PCS C and F Block licenses.

**II. CLEARCOMM HAS A DIRECT FINANCIAL INTEREST IN THE OUTCOME OF THE PROCEEDING SUFFICIENT TO CONFER "PARTY-IN-INTEREST" STATUS AS A MATTER OF RIGHT.**

ClearComm submits that it is entitled to intervention as of right to protect its interests in a pending collateral proceeding and as a Commission licensee.

Under Section 1.223(a) of the Commission's rules, a petitioner is entitled to intervene where a party can demonstrate that it may be affected by the administrative action under consideration.<sup>6</sup> ClearComm may be affected by this proceeding due to the pendency of a lawsuit between ClearComm and ClearComm's corporate bidding services provider during the C Block auctions, Romulus Telecommunications, Inc.<sup>7</sup> Mr. Breen holds a 50% beneficial interest in Romulus. In the court action, ClearComm has sought damages for the alleged misconduct associated with the C Block auction and recovery of all costs arising out of the alleged misconduct of the defendants, including Mr. Easton and Romulus. Therefore any factual or legal finding regarding those events in this proceeding may have a collateral impact on the outcome of ClearComm's litigation.

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<sup>6</sup> In re Application of Telephone and Data Systems, Inc., 9 FCC Rcd 2780, 2781 (Rev. Bd. 1994)("Telephone and Data Systems").

<sup>7</sup> PCS 2000, L.P., et al v. Romulus Telecommunications, Inc.; Anthony T Easton et al, Civ. No. KAC96-07 (803)(Commonwealth of Puerto Rico, Superior Court of San Juan).

Such an interest is sufficient to grant ClearComm status as an intervenor as of right.

In addition, part of the factual record that led both to the licensing of ClearComm and the designation of this proceeding necessarily will be at issue during the course of this hearing. As such, the factual findings in this case could clearly affect ClearComm's standing before the FCC. More specifically, while this proceeding is designed to examine the conduct of Mr. Breen, any examination of his post-bid conduct has as its necessary factual antecedent an inquiry into Mr. Breen's conduct as a bidding agent and director of Unicom, then ClearComm's corporate general partner. Such an inquiry, as well as the apparent necessity of examining Mr. Easton, may result in evidence of ClearComm's corporate conduct in the auctions. Although ClearComm believes these issues have been conclusively resolved, evidence regarding these issues undoubtedly will be produced in the course of this hearing. Moreover, it is possible that ClearComm's corporate conduct will be specifically reviewed.<sup>8</sup> The production of such evidence and the possibility of such a review place this case squarely within well-established Commission precedent in which the FCC has allowed intervention where findings may

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<sup>8</sup> Indeed the Presiding Officer has yet to determine whether the facts underlying the Hearing Designation Order will be assumed true, or rather will be reexamined in this proceeding. October 15, 1997 Hearing Conference, Tr. 26-27. The Wireless Telecommunication Bureau's pleading has also raised the specter of reopening the inquiry into ClearComm's C Block bid irregularities. Opposition to Petition for Reconsideration of Wireless Telecommunications Bureau, WT Docket No. 97-199, at 12 (filed October 16, 1997). These issues have long ago been resolved and ClearComm would strenuously oppose any reexamination of these issues as both unwarranted and violative of res judicata principles. Any further factfinding regarding this matter may have direct and deleterious effect on ClearComm's standing as a Commission licensee; thus, it is undeniable that ClearComm may be "aggrieved or adversely affected" by the administrative action being contemplated.

“impugn [a licensee’s] character and his ability to earn a livelihood in the communications industry”.<sup>9</sup> As in *Palmetto Communications Co.*, 6 FCC Rcd 5023, 5024 (Rev. Bd. 1991), the evidence adduced in this hearing “might collaterally reflect adversely” on ClearComm. Thus, ClearComm has an obvious interest in the outcome of this proceeding and its petition to intervene as of right should be granted.<sup>10</sup>

**III. ALTERNATIVELY, CLEARCOMM SHOULD BE GRANTED INTERVENTION BECAUSE IT WILL CONTRIBUTE TO THE DEVELOPMENT OF A COMPLETE AND ACCURATE RECORD.**

Even if the Presiding Officer were disinclined to allow intervention as of right, Section 1.223(b) of the Commission’s rules permits intervention in the discretion of the presiding officer where the petitioner can demonstrate that it has an “interest” in the proceeding and that its participation “will assist the Commission in the determination of the issues in question”.<sup>11</sup>

ClearComm has a demonstrable interest in the outcome of this proceeding. As indicated above, Mr. Breen at one time was a director of ClearComm’s former general partner Unicom, and he also served as an auction bidding agent for ClearComm. The

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<sup>9</sup> West Jersey Broadcasting Co., 48 R.R.2d 970, 974 (1980). See also Quality Broadcasting Corp., 4 R.R.2d 865, 866 (1965)(intervention granted on showing that initial decision contained findings which “adversely affect [licensee’s] reputation for truth and veracity, his reputation in the broadcasting community, his standing before the Commission, and his ability to continue to earn a livelihood in the broadcasting industry”).

<sup>10</sup> In addition, ClearComm has no “unity of interest” with Westel or Mr. Breen. As such, it may not reasonably “have the designated issues defended solely” by Westel. ClearComm’s interests relate solely to its corporate conduct surrounding the C Block auction and do not correlate with the distinct and broader interests of Westel.

issues designated in this proceeding deal exclusively with Mr. Breen's conduct in these capacities. Indeed, the primary purpose of the hearing is to "determine the facts and circumstances surrounding the conduct of Quentin L. Breen in connection with PCS 2000's bids placed on January 23, 1996, in the Commission's Broadband PCS C Block auction".<sup>12</sup>

The Commission has granted PCS licenses to ClearComm based on the factual record adduced in the proceeding leading up to the NAL.<sup>13</sup> Moreover, many of the questions raised in the HDO are based on information supplied to the Commission by ClearComm during the course of the Commission's previous investigation. Indeed, the HDO repeatedly cites a report by an independent counsel which was initiated by ClearComm.<sup>14</sup> Therefore, ClearComm's investigation and conclusions are central to the very foundations of this proceeding, making ClearComm's presence particularly important.

Moreover, ClearComm submits that its participation in this proceeding will fundamentally assist in the determination of the designated issues. In the instant case, ClearComm and its employees undoubtedly will be valuable sources of information. In

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<sup>11</sup> 47 C.F.R. Sec. 1.223(b).

<sup>12</sup> Hearing Designation Order ¶ 53.

<sup>13</sup> PCS 2000, L.P., Notice of Apparent Liability for Forfeiture, 12 FCC Rcd. 1703 (1997).

<sup>14</sup> See Hearing Designation Order ¶ 15 (citing Independent Counsel's Report regarding Mr. Easton's searches of Ms. Hamilton's desk); Hearing Designation Order ¶ 17 (citing Independent Counsel's Report regarding Mr. Easton's possible destruction  
(...Continued)

addition, since ClearComm has an interest distinct from that of Westel, its participation may well help "sharpen up the evidence".<sup>15</sup> Accordingly, granting ClearComm's petition to intervene will enable the Presiding Officer to rule on the designated issues based on the most complete record possible.

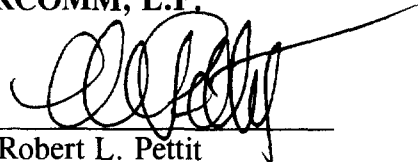
#### IV. CONCLUSION

For all the foregoing reasons, the Commission should grant ClearComm's Petition for Intervention and authorize its full participation in the above-captioned proceeding immediately.

Respectfully submitted,

**CLEARCOMM, L.P.**

By:



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November 13, 1997

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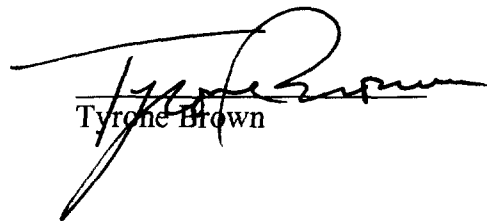
of documents); Hearing Designation Order ¶ 20 (citing Independent Counsel's Report regarding Mr. Easton's representations to the Unicom Board).

<sup>15</sup> Palmetto Communications Company, 6 FCC Rcd 5023, 5024 (Rev. Bd. 1991).

**AFFIDAVIT OF TYRONE BROWN**

I, Tyrone Brown, Senior Vice President of ClearComm, L.P., a broadband PCS C Block licensee, declare that I have read the foregoing "Petition to Intervene" and that the facts contained therein are true and correct to the best of my personal knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

  
Tyrone Brown

November 13, 1997



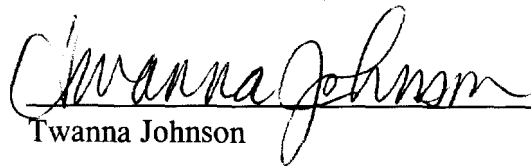
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 1997, I caused copies of the foregoing "Petition to Intervene" to be hand-delivered to the following:

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